

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 17-682V

Filed: October 12, 2017

UNPUBLISHED

TANITHA JACKSON,
as the legal representative of her minor
son, D. E.,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);
Ruling on Entitlement; Concession;
Causation-In-Fact; Pneumococcal
Conjugate Vaccine; Varicella
Vaccine; Cellulitis; Abscess

Curtis R. Webb, Twin Falls, ID, for petitioner.

Lisa Ann Watts, U.S. Department of Justice, Washington, DC, for respondent.

RULING ON ENTITLEMENT¹

Dorsey, Chief Special Master:

On May 23, 2017, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act”). Petitioner alleges that D.E. developed an abscess requiring surgery as a result of his measles, mumps and rubella (“MMR”) vaccine, pneumococcal 13-valent conjugate (“PCV 13”) vaccine, hepatitis A (“Hep A”) vaccine, influenza (“flu”) vaccine, and varicella vaccine administered on October 13, 2016. Petition at 1-3. The case was assigned to the Special Processing Unit of the Office of Special Masters.

¹ Because this unpublished ruling contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

On October 12, 2017, respondent filed his Rule 4(c) report in which he concedes that petitioner is entitled to compensation in this case. Respondent's Rule 4(c) Report at 1. Specifically, respondent indicates that

[m]edical personnel at the Division of Injury Compensation Programs, Department of Health and Human Services ("DICP"), have reviewed the Petition and supporting documentation filed in this case and conclude that D.E. developed right leg cellulitis and abscess, which were more likely than not caused by administration of the varicella and/or PCV vaccines in his right thigh. No other causes for D.E.'s injuries have been identified. See 42 U.S.C. § 300aa-13(a)(1)(B). In addition, given the medical records outlined above, petitioner has satisfied the statutory requirement that D.E.'s injury last for at least six months, or result in "inpatient hospitalization and surgical intervention" as required by 42 U.S.C. § 300aa-11(c)(1)(D)(i),(iii). Therefore, based on the record as it now stands, petitioner has satisfied all legal prerequisites for compensation under the Act.

Id. at 4.

In view of respondent's position and the evidence of record, the undersigned finds that petitioner is entitled to compensation.

IT IS SO ORDERED.

s/Nora Beth Dorsey

Nora Beth Dorsey
Chief Special Master